

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of

TRAFIGURA PTE LTD

For an Order Pursuant to 28 U.S.C. § 1782
To Conduct Discovery for Use in a Foreign
Proceeding

No. 25 Misc. 41

DECLARATION OF ROBERT K. KRY

Robert K. Kry declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner with the law firm MoloLamken LLP and represent applicant Trafigura Pte Ltd (“Trafigura”) in the above-captioned matter. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto. To the best of my knowledge, all exhibits attached hereto are true and accurate copies of the documents they purport to be, or relevant excerpts therefrom.

2. I submit this declaration in support of Trafigura’s application for an order authorizing discovery pursuant to 28 U.S.C. § 1782. As explained in the Declaration of Humpreet Kaur Grigoriadis, Trafigura has sued eight defendants in England arising out of an alleged fraud involving shipments of metals. Among other things, Trafigura has brought “proprietary claims” to recover the funds it paid as a result of the fraud and any traceable proceeds thereof.

3. In support of those claims, Trafigura seeks an order pursuant to 28 U.S.C. § 1782 authorizing subpoenas to fifteen respondents (predominantly financial institutions) for records of (a) any U.S. dollar transfers to or from the defendants in the English proceedings and certain

affiliates (the “Target Entities”); and (b) any account statements and other documents relating to any Target Entity account at those financial institutions.

4. As explained below, each of the financial institution respondents regularly processes U.S. dollar transfers in New York City for foreign banks. One system that financial institutions use to process funds transfers is the Clearing House Interbank Payments System (“CHIPS”) administered by respondent The Clearing House Payments Company L.L.C. (the “Clearing House”). The CHIPS Rules and Administrative Procedures explain that each participant must make a daily deposit into a designated account at the Federal Reserve Bank of New York, and that any net balance is disbursed from that account at the end of the day. Ex. A (Rules 12 & 13). The Federal Reserve’s website states that the Federal Reserve Bank of New York is located in this District at 33 Liberty Street, New York, NY 10045. Ex. B. The CHIPS Rules state that CHIPS transactions are governed by New York law. Ex. A (Rule 3(a)). The Clearing House’s October 2024 public disclosure regarding the operation of CHIPS confirms the foregoing information. Ex. C at 16-18, 24-25, 72. That publication also reports that 95% of transfers processed through CHIPS have an international component. Ex. C at 13. According to a list published by the Clearing House, each of the financial institution respondents in this case participates in CHIPS. Ex. D.

5. Another system that financial institutions use to process U.S. dollar funds transfers is the U.S. Federal Reserve’s Fedwire Funds Service (“Fedwire”). According to a Federal Reserve product sheet, Fedwire offers a secure, real-time system by which financial institutions send and receive funds using accounts at a Federal Reserve Bank. Ex. E. A Fedwire presentation explains that U.S. banks can use Fedwire to send or receive the U.S. dollar leg of a cross-border funds transfer. Ex. F at 4, 12. Fedwire’s online directory reflects that each of the financial institution respondents in this case participates in Fedwire through either a location in New York City or

another location that is served by the Federal Reserve Bank of New York. Ex. G; Ex. B. For four respondents (Bank of China, Commerzbank, Société Generale, and Standard Chartered), the directory indicates that the New York location is the only location through which the respondent participates. Ex. G at 3, 10, 15, 17.

6. As explained below, each of the respondents in this case has significant connections to the Southern District of New York. Most of the respondents are headquartered in this District. And each financial institution respondent processes transfers in this District using CHIPS and Fedwire.

7. **Bank of America, N.A.** states on its website that it is based in Charlotte, NC. Ex. H at 1. Bank of America's website instructs customers who want to receive an international U.S. dollar wire transfer to direct the funds to Bank of America's branch in this District at 222 Broadway, New York, NY 10038. Ex. H at 7-8. The Clearing House lists Bank of America as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire's directory lists Bank of America as a Fedwire participant through its New York location. Ex. G at 1.

8. **Bank of China U.S.A.** states on its website that its New York Branch is located in this District at 1045 Avenue of Americas, New York, NY 10018. Ex. I at 2. An August 2024 brochure describes this location as the "Bank of China U.S.A. Headquarters." Ex. J at 13. Bank of China U.S.A.'s website states that its "USD clearing services" are provided by this New York branch. Ex. I at 8. The Clearing House lists Bank of China as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire's directory lists Bank of China as a Fedwire participant through its New York location. Ex. G at 2. That New York entity is the only Bank of China entity that appears in Fedwire's directory. Ex. G at 3.

9. **The Bank of New York Mellon Corporation** states on its website that it is headquartered in this District at 240 Greenwich Street. Ex. K. Many courts have held that Bank

of New York Mellon is subject to general jurisdiction in this District and is thus “found” in this District within the meaning of § 1782. *In re W. Afr. Min. Trading Ltd.*, No. 24-mc-114, 2024 WL 3862293, at *2 (S.D.N.Y. Aug. 19, 2024); *In re Golden Meditech Holdings Ltd.*, No. 24-mc-24, 2024 WL 1349135, at *2 (S.D.N.Y. Mar. 29, 2024); *In re Litasco SA*, No. 23-mc-354, 2023 WL 8700957, at *1 (S.D.N.Y. Dec. 15, 2023); *In re Abraaj Inv. Mgmt. Ltd.*, No. 20-mc-229, 2023 WL 2674752, at *2-4 (S.D.N.Y. Mar. 29, 2023). The Clearing House lists Bank of New York Mellon as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire’s directory lists Bank of New York Mellon as a Fedwire participant through its New York location. Ex. G at 4.

10. **Barclays Bank PLC, New York Branch**, according to the New York Department of Financial Services website, is located in this District at 745 Seventh Avenue, New York, NY 10019. Ex. L. A Barclays website states that “New York is home to Barclays’ US headquarters.” Ex. M. A court in this District has found that “Barclays . . . U.S. operations [are] headquartered in New York.” *Pac. Life Ins. Co. v. Bank of New York Mellon*, No. 17-cv-1388, 2022 WL 1446552, at *8 n.5 (S.D.N.Y. Feb. 22, 2022), *adopted in relevant part*, 2023 WL 5128079 (S.D.N.Y. Aug. 10, 2023). At least one court has held that Barclays Bank PLC’s New York branch is subject to general jurisdiction in this District and is thus “found” in this District within the meaning of § 1782. *In re Abraaj Inv. Mgmt. Ltd.*, No. 20-mc-229, 2023 WL 2674752, at *2-4 (S.D.N.Y. Mar. 29, 2023). Barclays’ most recent U.S. Resolution Plan filed with the FDIC states that two of the “primary activities” of the New York branch are “management of Barclays’ USD funding positions and US dollar clearing.” Ex. N at 34. Barclays’ website instructs customers who want to receive an international payment in U.S. dollars to direct the payment to New York because “Barclays Bank UK’s PLC USD account is held with Barclays Bank PLC, New York.” Ex. O. The Clearing House lists Barclays Bank as a participant in its New York-based CHIPS funds transfer system.

Ex. D. Fedwire's directory lists Barclays Bank as a Fedwire participant through its New York location. Ex. G at 5.

11. **BNP Paribas USA, Inc.** states on its website that its headquarters is located in this District at 787 Seventh Avenue, New York, NY. Ex. P. At least one court has held that BNP Paribas USA is subject to general jurisdiction in this District and is thus "found" in this District within the meaning of § 1782. *In re Abraaj Inv. Mgmt. Ltd.*, No. 20-mc-229, 2023 WL 2674752, at *2-4 (S.D.N.Y. Mar. 29, 2023); *see also In re Banco Santander (Brasil) S.A.*, No. 22-mc-00022, 2022 WL 1546663, at *1-2 (S.D.N.Y. Apr. 6, 2022) (granting § 1782 application with respect to BNP Paribas USA because it "reside[s] in this district and . . . the discovery sought results from [its] contacts with this District"). The Clearing House lists BNP Paribas New York as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire's directory reflects that BNP Paribas and BNP Paribas Fortis participate in Fedwire through New York City and Jersey City, NJ locations. Ex. G at 6-7. The Federal Reserve's website reflects that both locations are served by the Federal Reserve Bank of New York. Ex. B at 3.

12. **Citibank, N.A.** states on its website that its global headquarters is located in this District at 388 Greenwich Street, New York, NY 10013. Ex. Q. The U.S. Court of Appeals for the Second Circuit and many courts in this District have held that Citibank is subject to general jurisdiction in this District and/or is "found" in this District within the meaning of § 1782. *See, e.g., Savannah Midstream Inv. Ltd. v. Citibank, N.A.*, No. 23-1295, 2024 WL 2990608, at *1 (2d Cir. June 14, 2024); *In re W. Afr. Min. Trading Ltd.*, No. 24-mc-114, 2024 WL 3862293 at *2 (S.D.N.Y. Aug. 19, 2024); *In re Golden Meditech Holdings Ltd.*, No. 24-mc-24, 2024 WL 1349135, at *2 (S.D.N.Y. Mar. 29, 2024); *In re Klein*, No. 23-mc-211, 2023 WL 8827847, at *7 (S.D.N.Y. Dec. 21, 2023); *In re Litasco SA*, No. 23-mc-354, 2023 WL 8700957, at *1 (S.D.N.Y. Dec. 15, 2023); *In re Kuwait Ports Auth.*, No. 1:20-mc-46, 2021 WL 5909999, at *6 & n.8

(S.D.N.Y. Dec. 13, 2021). The Clearing House lists Citibank as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire’s directory lists Citibank as a Fedwire participant through its New York location. Ex. G at 8.

13. **The Clearing House Payments Company LLC** administers the Clearing House Interbank Payments System. The Clearing House’s October 2024 public disclosure regarding CHIPS states that the Clearing House is “headquartered in New York City.” Ex. C at 4, 24 n.67. The Clearing House’s LinkedIn page confirms that its “headquarters” is New York City and lists its primary location as an address in this District, 1114 Avenue of the Americas, New York, NY 10036. Ex. R. Many courts in this District have held that the Clearing House is subject to general jurisdiction in this District and is thus “found” in this District within the meaning of § 1782. *See, e.g., In re Klein*, No. 23-mc-211, 2023 WL 8827847, at *7 (S.D.N.Y. Dec. 21, 2023); *In re Litasco SA*, No. 23-mc-354, 2023 WL 8700957, at *1 (S.D.N.Y. Dec. 15, 2023); *In re Abraaj Inv. Mgmt. Ltd.*, No. 20-mc-229, 2023 WL 2674752, at *2-4 (S.D.N.Y. Mar. 29, 2023).

14. **Commerzbank AG, New York Branch** states on its website that it is located in this District at 225 Liberty Street, New York, NY 10281. Ex. S at 1. The website includes a legal notice stating that “[b]anking services in the U.S. will be provided by Commerzbank AG, New York Branch.” Ex. S at 4. The Clearing House lists Commerzbank as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire’s directory lists Commerzbank’s New York branch as a Fedwire participant. Ex. G at 9. The New York branch is the only Commerzbank entity that appears in Fedwire’s directory. Ex. G at 10.

15. **Deutsche Bank Trust Co. Americas**, according to Deutsche Bank’s most recent U.S. Resolution Plan filed with the FDIC, is “a New York corporation and New York state-chartered bank.” Ex. T at 37. Deutsche Bank’s website states that its “Head Office” in the United States is located in this District at One Columbus Circle, New York, NY 10019. Ex. U. Deutsche

Bank Trust Co. Americas has stated in a legal filing that it is organized under the laws of New York and maintains its principal place of business in New York City. Ex. V ¶5. Many courts in this District have held that Deutsche Bank Trust Co. Americas is subject to general jurisdiction in this District and is thus “found” in this District within the meaning of § 1782. *See, e.g., In re W. Afr. Min. Trading Ltd.*, No. 24-mc-114, 2024 WL 3862293, at *2 (S.D.N.Y. Aug. 19, 2024); *In re Litasco SA*, No. 23-mc-354, 2023 WL 8700957, at *1 (S.D.N.Y. Dec. 15, 2023); *In re Abraaj Inv. Mgmt. Ltd.*, No. 20-mc-229, 2023 WL 2674752, at *2-4 (S.D.N.Y. Mar. 29, 2023). The Clearing House lists Deutsche Bank Trust Co. Americas as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire’s directory lists Deutsche Bank Trust Co. Americas as a Fedwire participant through its New York location. Ex. G at 11.

16. **HSBC Bank USA, N.A.**, according to its most recent U.S. Resolution Plan filed with the FDIC, had its “principal executive offices” in this District at 452 Fifth Avenue, New York, New York. Ex. W at 23. According to its website, HSBC recently moved its U.S. headquarters to 66 Hudson Boulevard, New York, NY 10001, also in this District. Ex. X at 2, 4. Multiple courts have held that HSBC Bank USA is subject to general jurisdiction in this District and is thus “found” in this District within the meaning of § 1782. *See, e.g., In re W. Afr. Min. Trading Ltd.*, No. 24-mc-114, 2024 WL 3862293, at *2 (S.D.N.Y. Aug. 19, 2024); *In re Litasco SA*, No. 23-mc-354, 2023 WL 8700957, at *1 (S.D.N.Y. Dec. 15, 2023); *see also Chan Ah Wah v. HSBC N. Am. Holdings Inc.*, No. 15-cv-8974, 2019 WL 859042, at *1 (S.D.N.Y. Feb. 22, 2019). HSBC’s website instructs customers who want to receive an international U.S. dollar wire transfer to direct the funds to its New York City location. Ex. X at 8. The Clearing House lists HSBC Bank USA as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire’s directory lists HSBC Bank USA as a Fedwire participant through its New York location. Ex. G at 12.

17. **JPMorgan Chase Bank, N.A.** is a national banking association whose corporate parent stated in a 2024 SEC filing that it is headquartered in this District at 383 Madison Avenue, New York, NY 10179. Ex. Y at 1, 34. Many courts have held that JPMorgan Chase Bank is subject to general jurisdiction in this District and is thus “found” in this District within the meaning of § 1782. *See, e.g., In re W. Afr. Min. Trading Ltd.*, No. 24-mc-114, 2024 WL 3862293, at *2 (S.D.N.Y. Aug. 19, 2024); *In re Golden Meditech Holdings Ltd.*, No. 24-mc-24, 2024 WL 1349135, at *2 (S.D.N.Y. Mar. 29, 2024); *In re Litasco SA*, No. 23-mc-354, 2023 WL 8700957, at *1 (S.D.N.Y. Dec. 15, 2023); *In re Klein*, No. 23-mc-211, 2023 WL 8827847, at *7 (S.D.N.Y. Dec. 21, 2023); *see also Commerzbank AG v. U.S. Bank, N.A.*, 100 F.4th 362, 386 n.31 (2d Cir. 2024) (noting that JPMorgan Chase Bank’s “principal place of business [is] in New York”). The Clearing House lists JPMorgan Chase Bank as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire’s directory lists JPMorgan Chase Bank as a Fedwire participant through its New York location. Ex. G at 13.

18. **Société Générale, New York Branch** states on its website that it is located in this District at 245 Park Avenue, New York, NY 10167. Ex. Z (“New York Head Office”). Société Générale’s most recent U.S. Resolution Plan filed with the FDIC explains that Société Générale conducts U.S. banking operations through its New York Branch. Ex. AA at 6. Multiple courts have held that Société Générale’s New York Branch is subject to general jurisdiction in this District and is thus “found” in this District within the meaning of § 1782. *In re Golden Meditech Holdings Ltd.*, No. 24-mc-24, 2024 WL 1349135, at *2 (S.D.N.Y. Mar. 29, 2024); *In re Abraaj Inv. Mgmt. Ltd.*, No. 20-mc-229, 2023 WL 2674752, at *2-4 (S.D.N.Y. Mar. 29, 2023). Société Générale’s most recent Resolution Plan describes two of the New York branch’s “primary activities” as “clearing U.S. dollar (‘USD’) payments for SG Group affiliates and management of SG’s USD funding position.” Ex. AA at 7. The Clearing House lists Société Générale as a

participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire's directory lists Société Générale as a Fedwire participant through its New York location. Ex. G at 14. That New York entity is the only Société Générale entity that appears in Fedwire's directory. Ex. G at 15.

19. **Standard Chartered Bank, New York Branch**, according to the Standard Chartered website, has its “headquarters in New York” and is located in this District at 1095 Avenue of the Americas, New York, NY 10036. Ex. BB (“Standard Chartered Bank USA”). Multiple courts have found that a Standard Chartered entity is subject to general jurisdiction in this District and is thus “found” in this District within the meaning of § 1782. *In re Abraaj Inv. Mgmt. Ltd.*, No. 20-mc-229, 2023 WL 2674752, at *2-4 (S.D.N.Y. Mar. 29, 2023); *In re Litasco SA*, No. 23-mc-354, 2023 WL 8700957, at *1 (S.D.N.Y. Dec. 15, 2023). The Clearing House lists Standard Chartered Bank as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire's directory lists Standard Chartered Bank Limited as a Fedwire participant through its New York location. Ex. G at 16. That New York entity is the only Standard Chartered entity that appears in Fedwire's directory. Ex. G at 17.

20. **UBS AG, New York Branch** states on its website that it is located in this District at 1285 Avenue of the Americas. Ex. CC at 1 (“New York Headquarters Branch”). Multiple courts have held that UBS or its New York branch are subject to general jurisdiction in this District and are thus “found” in this District within the meaning of § 1782. *In re W. Afr. Min. Trading Ltd.*, No. 24-mc-114, 2024 WL 3862293, at *2 (S.D.N.Y. Aug. 19, 2024); *In re Golden Meditech Holdings Ltd.*, No. 24-mc-24, 2024 WL 1349135, at *2 (S.D.N.Y. Mar. 29, 2024); *In re Abraaj Inv. Mgmt. Ltd.*, No. 20-mc-229, 2023 WL 2674752, at *2-4 (S.D.N.Y. Mar. 29, 2023). The Clearing House lists UBS as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire's directory lists UBS as a Fedwire participant through its Stamford, CT location.

Ex. G at 18. The Federal Reserve's website reflects that this location is served by the Federal Reserve Bank of New York. Ex. B at 3.

21. **Wells Fargo Bank, N.A.** states on its website that it maintains an "International Branch" in New York. Ex. DD at 1. A Wells Fargo handbook instructs customers who want to receive an international U.S. dollar wire transfer to direct the funds to Wells Fargo in New York. Ex. EE at 16. The Clearing House lists "Wells Fargo Bank NY INTL" as a participant in its New York-based CHIPS funds transfer system. Ex. D. Fedwire's directory reflects that "Wells Fargo NY INTL" participates in Fedwire from its New York City location. Ex. G at 19.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2025.
New York, New York

Robert K. Kry